



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 12, 2012

Mr. Undray D. Wilson
DOC 891719
4490 W. Reformatory Rd.
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-352; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Wilson:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police ("ISP") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Major Douglas E. Shelton responded in writing on behalf of the ISP. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on November 9, 2012, you submitted a written request for records to the ISP for certain evidence pertaining to Cause No. 34-D02-0003-CF-00095. On November 16, 2012, the ISP responded in writing to your request and advised that your request should be directed to the Kokomo Police Department.

In response to your formal complaint, Major Shelton advised that the records that you requested were part of the official criminal case file maintained by the ISP. The information in the files was compiled during the course of an investigation of a crime, thus the ISP has exercised its discretion and denied your request pursuant to I.C. § 5-14-3-4(b)(1). Further, the Kokomo Police Department is the investigating agency in this matter and any request for the release of case information should be directed to them.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The ISP is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the ISP's public

records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. In response to your request, the ISP responded in writing within seven (7) days of receipt. Thus, it is my opinion that the ISP complied with section 9(b) of the APRA in response to your request. However, the ISP in its original denial of your request failed to cite to the investigatory records exception found under I.C. § 5-14-3-4(b)(1); thus it is my opinion that the ISP acted contrary to section 9(c) of the APRA in its original denial of your request.

As to the substance of the ISP's denial in response to your formal complaint, the APRA provides that a law enforcement agency retains the discretion to disclose its investigatory records. *See* I.C. § 5-14-3-4(b)(1). An investigatory record is defined as "information compiled in the course of the investigation of a crime." *See* I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. "Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1)." *Id.* To the extent that the ISP denied your request for investigatory records maintained by the agency, it is my opinion that the ISP did not violate the APRA.

CONCLUSION

Based on the foregoing, it is my opinion that the ISP acted contrary to the requirements of section 9(c) of the APRA in its original denial of your request. As to all other issues, it is my opinion that the ISP did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Major Douglas E. Shelton